IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1286 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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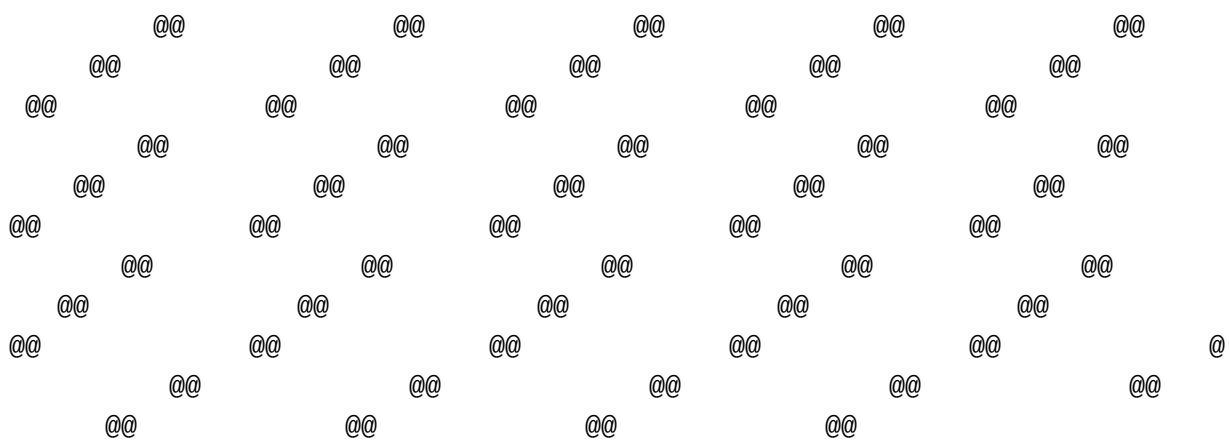
1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No



3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

NANJI GORABHAI DECD.THRO'HEIRSARJUN NANJIBHAI

Versus

GULAM MOHAMMED MUSABHAI

Appearance:

MR KL DAVE for Petitioners

Party in person - Respondent No. 1 appeared

CORAM : MR.JUSTICE D.C.SRIVASTAVA
Date of decision: 15/02/99

ORAL JUDGEMENT

1. Legal representatives of deceased tenant Nanjibhai Gorabhai have filed this revision under Section 29(2) of the Bombay Rent Act challenging the concurrent Judgments and Decrees of the trial Court and the lower Appellate Court.

2. The list was revised twice, but none appeared on behalf of the revisionist till 1.00 p.m., as such party in person, viz. thelandlord was heard in person and the Judgments of the two Courts below were examined.

3. Brief facts giving rise to this revision are that the deceased tenant was let out the disputed hut by the respondent on monthly rent of Rs.9/-. Rent from 1.4.1979 fell due, hence notice dated 30.3.1981 was served. Despite service of notice neither the rent was paid nor the hut was vacated, hence Suit for eviction, recovery of arrears of rent and mesne profits was filed.

4. The Suit was resisted by the defendants on the ground that the plaintiffs have no right to sue; that the notice is illegal and invalid and that the notice was not served. It was also denied that the rent was due since 1.4.1979. Relationship of landlord and tenant between the parties was also denied. The defendant pleaded that the suit chawl belonging to the plaintiff was put to auction by the Municipal Corporation due to non-payment of municipal taxes and as such the municipal corporation became the owner - landlord. The Corporation gave notice to the tenant asking him to pay the rent whereupon the entire rent was paid to the Corporation against the receipt. In this way relationship of landlord and tenant between the parties was denied. Plea of mis-joinder and non-joinder of parties was also raised. Dispute regarding standard rent was also raised in the written statement.

5. Repelling the aforesaid defence the trial Court decreed the Suit, whereafter an Appeal was preferred which too was dismissed with slight modification that the standard rent was Rs.9/- per month exclusive of taxes. Hence this revision.

6. The first point for consideration is whether the relationship of landlord and tenant between the parties

was rightly considered by the two courts below in accordance with law. The finding of the appellate Court have been examined which are based upon proper appreciation of oral as well as documentary evidence on record. The said findings cannot be said to be perverse. As such the revisional court will be reluctant to interfere with such findings of fact. The appellate Court on the basis of documents on record and Exh.29 order passed by competent Officer of the Corporation, came to the conclusion that it was in favour of the plaintiff rather than the defendants. As per this order the Appellate Court found that there was declaration by the Competent Authority of the Municipal Corporation that the suit hut has been wrongly entered in the name of Municipal Corporation. There was other evidence also from which the appellate Court came to the conclusion that no doubt other property in the chawl was auctioned by the Municipal Corporation, but there is no mention that the disputed hut was also auctioned and that the Corporation became its owner. The evidenciary value of the municipal assessment registers was also rightly considered and discussed by the lower Appellate Court that these registers do not establish relationship of landlord and tenant between the parties, rather they are evidence for fiscal puspose. If in this background some amount of rent was paid by the revisionist to the Corporation against receipts it cannot be said that the relationship of landlord and tenant between the parties ceased after alleged auction by the Municipal Corporation. Since there was evidence before the lower Appellate Court that the hut in question was not auctioned, payment of rent by the tenant to the Corporation will not change the situation nor it can be said that the relationship of landlord and tenant between the parties came to an end.

7. Finding on question of relationship of landlord and tenant between the parties is a pure finding of fact which cannot be interfered in revision unless such finding is found to be perverse or is based upon inadmissible evidence. These two defects are not to be found in the Judgments of the two courts below in returning the finding that the relationship of landlord and tenant between the parties exists. There is no notice of attornment either from the tenant or from the Municipal Corporation from which inference could be drawn that the relationship of landlord and tenant between the parties came to an end and fresh relationship was created between the revisionist and the Municipal Corporation. As such the two Courts below committed no error of law in returning the findings that the relationship of landlord

and tenant subsisted between the parties.

8. The service of notice was denied by the tenant, but this denial has no legs to stand. Notice was sent by Registered A.D. post. Acknowledgement was returned to the landlord with signature of the addressee. Consequently service of notice was duly proved and no error was committed by the two courts in recording finding that the notice was duly served.

9. On the point of illegality of notice the only point which was raised before the Appellate Court was that the exact amount of arears of rent was not disclosed in the notice. On this ground notice cannot be said to be illegal. Necessary material was furnished in the notice from which the tenant could know what was the rate of rent alleged by the landlord and what was the period for which the rent was demanded by the landlord. In the notice the rent was demanded at the rate of Rs.9/- per month and it was disclosed that the rent was due from 1.4.1979 and the tenants were asked to hand over vacant possession on 30.4.1981. Thus, from the above material the tenants could have known the amount of rent by simple calculation and on this technical ground the notice cannot be said to be invalid.

10. The next point for consideration is whether the defendants were in arrears of rent exceeding six months on the date of service of notice. According to the landlord the rent was due since 1.4.1979. The case of the tenant was that after the property was auctioned by the Municipal Corporation rent was paid to the Corporation against receipt. As held above since relationship of landlord and tenant between the parties did not come to an end after alleged sale because the disputed hut was never sold by the Corporation, any payment of rent to the Municipal Corporation by the tenant even against receipt cannot be said to be valid payment of rent or valid discharge of liability of the tenant to pay the rent to the landlord. Thus, the amount of rent paid by the tenant to the Corporation was rightly excluded by the two Courts below. There is no averment by the tenant that after receipt of notice of demand he paid or tendered to the landlord any amount towards rent. There is no dispute that the rent remained due since 1.4.1979. The notice dated 30.3.1981 was served and nothing was paid to the respondents within a month of service of notice. Thus, the two courts below rightly concluded that the rent since 1.4.1979 was due from the revisionists which was not paid by them within a month of service of notice.

11. Some dispute was raised by the tenant regarding standard rent, but this dispute was a malafide dispute which was raised in the written statement. No such dispute was raised by sending reply notice to the landlord nor any application for fixation of standard rent was moved before the Competent Court. The dispute of standard rent should have been raised within a period of 30 days of receipt of notice and raising of such dispute in the written statement cannot be substitute for raising such dispute at the earliest opportunity. For this the Apex Court's pronouncement in Harbaldas v/s. Prabhudas reported in A.I.R. 1976 SC 2005 can be referred.

12. The lower Appellate Court did not find this dispute to be bonafide. Merely because the lower Appellate Court observed that the quantum of standard rent at the rate of Rs.9/- p.m. is inclusive of taxes it does not follow that the dispute of standard rent was really bonafide dispute.

13. The landlord in his oral submission argued that it is his liability to pay the taxes and the tenant is not liable to pay the taxes. In view of this statement and material on record it can be said that the case squarely fell within the ambit of Section 12(3)(a) of the Bombay Rent Act inasmuch as its ingredients were fully satisfied. It was a case of monthly tenancy where the tenant was in arrears of rent for a period exceeding six months on the date of service of notice. It was not paid within a month of service of notice and the dispute of standard rent was not only belated but was also not bonafide. If the case is covered by Section 12(3)(a) of the Rent Act the Courts below had no option, but to decree the Suit for eviction as well as for recovery of arrears of rent and mesne profits.

14. The lower Appellate Court has taken into consideration the fact that the total arrears between 1.4.1979 to 1.8.1998 came to Rs.2088/- whereas the defendant revisionist had deposited a sum of Rs.2493/-. May be, that the tenants deposited the rent in excess, but since the case was covered by Section 12(3)(a) of the Act this excess deposit cannot be considered to be a ground for granting relief to the tenant under Section 12(3)(b) of the Act.

15. In view of the above discussion, I do not find any merit in this revision which is liable to be dismissed and is hereby dismissed with costs.

sd/-

Date : February 15, 1999 (D. C. Srivastava, J.)

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